

APPENDIX A

**COMMUNICATION DOCUMENTING AGENCY AND TRIBAL
CONSULTATION AND COORDINATION**



REPLY REFER TO:

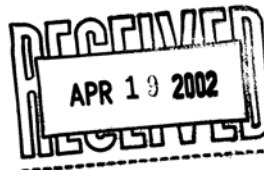
L1417 (THRO-M)

April 15, 2002

Chris Baker
E2M
1510 West Canal Court
Littleton, CO 80120

United States Department of the Interior

National Park Service
Theodore Roosevelt National Park
P.O. Box 7
215 Second Avenue
Medora, North Dakota 58645
(701) 623-4466



Dear Chris:

One of the landowners near the park's Elkhorn Ranch Unit plans to retire from ranching and farming and has expressed an interest in selling their 5,150-acre ranch to the National Park Service (NPS) for inclusion within Theodore Roosevelt National Park. This ranch is on the east side of the Little Missouri River adjacent to the Elkhorn Ranch Unit. Roosevelt grazed his cattle, hunted wildlife and wrote about his experiences on what is now this ranch. Historians report that the time Theodore Roosevelt spent at the Elkhorn helped formulated a conservation ethic that became so important to national conservation when TR assumed the Presidency in 1901. See attached map.

The NPS is beginning a boundary study to determine if this ranch should be included within the park as a national preserve. The product of this study will be a determination if the ranch and perhaps the associated grazing allotment should be added as a part of the National Park System as a national preserve to be administered by Theodore Roosevelt National Park.

A national preserve is managed differently than a national park. National preserves are defined by the NPS as areas having characteristics associated with national parks, but in which Congress has permitted continued grazing, public hunting, oil/gas exploration and extraction." The NPS manages 19 national preserves. The latest one was established by the U.S. Congress in 2001 and is called the Great Sand Dunes National Park and Preserve. This particular park and preserve is in south central Colorado.

To study this proposal, the park will follow the guidelines in the National Environmental Protection Act (NEPA). This letter and media releases will let the public know that the park is initiating the boundary amendment study. We are asking you and the public for input into this proposal. From initial input gathered by the public and the park staff, an Boundary Study Environmental Assessment (EA) will be prepared and distributed to the public. Later this summer after the Draft EA has been released, public workshops will be held around the state to discuss the EA and proposal. With the input provided by this public review, the park will

finalize the boundary study report and EA and make a decision whether to pursue this proposal by submitting a request to the U.S. Congress. Expanding Theodore Roosevelt National Park boundaries to include the establishment of a national preserve will require an act of Congress and a presidential signature.

Following are the concerns and issues identified by the park staff that needs to be studied in the EA. Are there any other concerns or issues that you think should be studied in this process?

- Does this area have national significance.
- Is the proposed lands suitable for inclusion within the National Park System as a theme or type of recreation opportunity not already adequately represented in the System.
- Is the area of sufficient size and appropriate configuration to ensure long-term protection and interpretation of the resource and to accommodate public use.
- Does the area have potential for efficient administration at a reasonable cost.
- What experiences did Theodore Roosevelt have in this area, i.e. hunting, cattle grazing, solace, remoteness, solitude, etc. Is it appropriate to incorporate these experiences and values into the management or interpretation of the preserve.
- If a national preserve is recommended to Congress, what legislated uses should be authorized.
- The owners of the ranch have a permit to graze approximately 18,000 acres of a U.S. Forest Service Allotment. Should the allotment or a portion of the allotment be included within the preserve.
- Should there be a recommendation that the State School Land and State Historical Society land be included within the proposal by either a purchase, exchange or donation.
- Are there other adjacent private or public-managed lands that would be appropriate to add to the proposal.
- If designated for inclusion, what are the socioeconomic impacts. For examples: Does the proposal have an effect on the population base of the region, what are the impacts to the Billings County tax base, what are the impacts of removing 5,150 acres from private ownership, what are the benefits for the public or park visitors, what are the projections for visitation to the national preserve and that contribution to the economy, how many new park employees might be hired and that impact/benefit to the local economies, and what services will be required within the preserve and who will provide those services, i.e. road maintenance, emergency medical needs, search and rescue, etc.
- Would preserve status impact current and future oil and gas development.
- Does the proposal impact prime farmland soils.
- What is the relationship of the proposal to air and water resources and quality.
- Are there impacts or benefits on existing or future water rights.
- What is the relationship and/or impacts to threatened and endangered species or other native vegetative or animal species.
- What are the benefits or impacts to archeological, paleontological, American Indian ethnographic, or historic sites.
- What are the potential recreational opportunities and do they relate to other recreational activities in the park, National Grasslands and the state-owned land, i.e. hunting,

canoeing, the Maah Daah Hey Trail, backpacking, wildlife observation, scenic viewing, horseback riding, etc.

- What is the expected infrastructure required by the park if the proposal moves forward. (Note: If Congress establishes a national preserve, detailed development, infrastructure, staffing and other issues would be addressed in a General Management Planning process. However it may be useful to state the current thoughts in this study and EA.)
- How will the wildlife and public hunting be managed.
- Should trapping be permitted within the national preserve boundary.

If you know of other issues or concerns that should be addressed in the EA, please let me know by May 1, 2002.

If you were mailed a copy of this letter, you will receive a copy of the EA to review. It is anticipated that this document will be ready for distribution to the public this summer. You will also receive notice of the public workshops.

Sincerely



Noel R. Poe
Superintendent

Enclosure



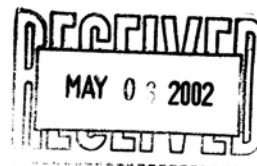
REPLY REFER TO:

L1417 (THRO-M)

May 2, 2002

United States Department of the Interior

National Park Service
Theodore Roosevelt National Park
P.O. Box 7
215 Second Avenue
Medora, North Dakota 58645
(701) 623-4466



Chris Baker,
E2M
1510 W Canal Court
Littleton, CO 80120

It has come to my attention that the scoping letter that I prepared on April 15, 2002, in regard to a boundary study that the National Park Service is considering at the Elkhorn Ranch Unit, may not have reached you or that the associated map may not have been included. Because I place great emphasis on public input during any of our planning processes, I am re-sending the original letter and map. I sincerely apologize for any inconvenience this may have caused and regret the confusion of receiving duplicate letters.

Please note that I am extending the comment period for the scoping process to May 17, 2002, to give you a chance to identify any issues that you may know of that were not included in the issues listed in the attached letter. Park staff will review the additional issues and they will be considered during the preparation of the environmental assessment for the study. Once drafted, the environmental assessment will be made available for public comment.

Sincerely,

Noel R. Poe
Superintendent

Enclosure: The original scoping letter and map

AUG-19-2002 16:10 FROM:THEODORE ROOSEVELT

17016234840

TO: 701 225 3421

P.003/004



United States Department of the Interior
NATIONAL PARK SERVICE

Theodore Roosevelt National Park
P.O. Box 7
315 Second Avenue
Medora, North Dakota 58645

REPLY REFER TO:

H4217

July 16, 2002

Steve Sieler
USDA - Natural Resources Conservation Service
P.O. Box 1458
220 East Rosser Avenue
Bismarck, North Dakota 58502-1458

Dear Mr. Sieler:

The National Park Service (NPS) and Theodore Roosevelt National Park (THRO) are preparing an Environmental Assessment to address a proposed boundary expansion at the park. The Environmental Assessment will be prepared in accordance with NPS Director's Order 12, Conservation Planning, Environmental Impact Analysis, and Decision Making, and regulation that implement the National Environmental Policy Act.

To help us identify environmental issues that may be affected, due to this proposed project, please provide us with written comments concerning interests within your agency's jurisdiction. Specifically, we are interested in any issues relating to the Farmland Protection Policy Act, the Grazing Land Protection Act, and any other acts under your jurisdiction that might apply to the proposed addition of these lands to the National Park Service and Theodore Roosevelt National Park as detailed below and in the attached map. Your response within 20 days from the receipt of this letter will be greatly appreciated.

There are currently two alternative for the boundary expansion at Theodore Roosevelt National Park: Alternative A, the "No Action" alternative (existing management of the park would continue and the boundary would not be expanded) and one "action" alternative, alternative B. The action alternative proposes expansion as follows:

Alternative B would expand the boundary of Theodore Roosevelt National Park by approximately 6,741 acres. Boundary expansion lands would consist of the privately-owned Eberts Ranch, two smaller privately owned parcels, and several parcels managed by the State Historical Society of North Dakota, North Dakota State Schools, and the U.S. Forest Service. The boundary expansion would generally follow geographic section lines and the Little Missouri River (see enclosed map).

APPENDIX A

AUG-19-2002 16:10 FROM: THEODORE ROOSEULT

17016234840

TO: 701 225 3421

P.004/004

If you have any questions regarding this request, please contact me at (701) 623-4466. Thank you for your assistance with this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Noel R. Poe". The signature is fluid and cursive, with the first name "Noel" and last name "Poe" clearly distinguishable.

Noel R. Poe
Superintendent

Enclosure (as stated)

AUG-19-2002 16:10 FROM:THEODORE ROOSEVELT

17016234840

TO:701 225 3421

P.002/004

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 1458
Bismarck, ND 58502-1458

August 14, 2002

Mr. Noel Poe
United States Department of the Interior
National Park Service
Theodore Roosevelt National Park
P.O. Box 7
315 Second Avenue
Medora, North Dakota 58645

Dear Mr. Poe,

This letter is a response to your request to help identify environmental issues relating to the National Park Service and Theodore Roosevelt National Park proposed boundary expansion. You have requested comments concerning Farmland Protection Policy Act (FPPA) and Grazing Land Protection Act.

The purpose of FPPA is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, particularly prime farmland. As one of your co-workers stated, these expansion acres will continue the use of cattle as a management tool to maintain and improve range conditions. This is not a conversion to nonagricultural uses. Therefore, FPPA does not apply.

We could not find references to the "Grazing Land Protection Act" but our State Range Conservationist, Jeff Printz, did offer the following comments. He stated that there is a need to continue the natural processes under which plant communities develop that include grazing, occasional fire, and rest. He further stated that these processes would maintain or improve health of the plant communities.

If you have any questions, please contact me at (701)-530-2019.

Sincerely,

A handwritten signature in cursive script that reads "Steven J. Sieler".

STEVEN J. SIELER
Acting State Soil Scientist

Received

AUG 15 2002

Theodore Roosevelt
National Park

cc: Jeffery Printz, State Range Conservationist, NRCS, Bismarck, ND

The Natural Resources Conservation Service provides leadership in a partnership effort to help people
Conserve, maintain, and improve our natural resources.

An Equal Opportunity Provider and Employer

AUG-25-2002 17:24 FROM: THEODORE ROOSEVELT

17016234840

TO: 701 745 3708

P.002/003



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



AUG 20 2002

Received *[Signature]*

AUG 21 2002

Theodore Roosevelt
National Park

Mr. Noel Poe, Superintendent
Theodore Roosevelt National Park
P.O. Box 7
Medora, North Dakota 58645

Re: Theodore Roosevelt National Park
Proposed Boundary Expansion

Dear Mr. Poe:

In response to your July 16, 2002 letter, the U.S. Fish and Wildlife Service (Service) has reviewed the referenced project and offers the following comments.

A list of federally endangered, threatened and candidate species that may be present within the proposed project's area of influence is enclosed. This list fulfills requirements of the Service under Section 7 of the Endangered Species Act.

If a Federal agency authorizes, funds, or carries out a proposed action, the responsible Federal agency, or its delegated agent, is required to evaluate whether the proposed action "may affect" listed species. If the Federal agency determines that the action "may affect" a listed species, then the responsible Federal agency shall request formal section 7 consultation with this office. If the evaluation shows a "no effect" situation on the listed species, further consultation is not necessary. No legal requirement exists to protect candidate species; however, it is within the spirit of the Endangered Species Act to consider these species as having significant value and worth protecting. At this time, I am not aware that any threatened, endangered or candidate species frequent the project area.

Thank you for the opportunity to provide comments. If additional information is required, please contact Karen Kreil at 701-355-8506.

Sincerely,

Roger L. Collins
Acting Field Supervisor
North Dakota Field Office

Enclosure

FEDERAL THREATENED, ENDANGERED, AND
CANDIDATE SPECIES FOUND IN BILLINGS COUNTY
NORTH DAKOTA

ENDANGERED SPECIES

Birds

Whooping crane (Grus Americana): Migrates through west and central counties during spring and fall. Prefers to roost on wetlands and stockdams with good visibility. Young adult summered in North Dakota in 1989, 1990, and 1993. Total population 140-150 birds.

Mammals

Black-footed ferret (Mustela nigripes): Exclusively associated with prairie dog towns. No records of occurrence in recent years, although there is potential for reintroduction in the future.

THREATENED SPECIES

Birds

Bald eagle (Haliaeetus leucocephalus): Migrates spring and fall statewide but primarily along the major river courses. It concentrates along the Missouri River during winter and is known to nest in the floodplain forest.

LISTED CANDIDATE

Mammals

Black-tailed prairie dog (Cynomys ludovicianus): Highly social, burrowing ground squirrels that live in colonies or towns. Prairie dogs inhabit semi-arid grasslands in southwestern North Dakota, primarily in Sioux County and an area paralleling the Little Missouri River.



North Dakota Parks & Recreation Department

1835 Bismarck Expressway, Bismarck, ND 58504
Phone: (701) 328-5357 Fax: (701) 328-5363 E-Mail: parkrec@state.nd.us Web: <http://www.ndparks.com>

Received
MAY 17 2002
Theodore Roosevelt
National Park

John Hoeven, Governor

Douglass A. Prchal, Director

Field Manager
Brad Pozarnsky
#2 Lake Metigoshe State Park
Bottineau, ND 58318
Ph. (701) 263-4054

Cross Ranch
1403 River Road
Center, ND 58530
Ph. (701) 794-3731
•Little Missouri-Killdeer

Devils Lake
152 S. Duncan Dr.
Devils Lake, ND 58301
Ph. (701) 766-4015
•Black Tiger Bay
•Grahams Island
•Shelvers Grove

Ft. Abraham Lincoln
4480 Fort Lincoln Road
Mandan, ND 58554
Ph. (701) 663-9571
•Sully Creek-Medora

Ft. Ransom
5981 Walt Hjelte Parkway
Ft. Ransom, ND 58033
Ph. (701) 973-4331
•Beaver Lake-Wishek
Ph. (701) 452-2752

Ft. Stevenson
1252A 41st Ave. NW
Garrison, ND 58540
Ph. (701) 337-5576

Icelandic
13571 Hwy. 5
Cavalier, ND 58220
Ph. (701) 265-4561

Lake Metigoshe
#2 Lake Metigoshe State Park
Bottineau, ND 58318
Ph. (701) 263-4651

Lake Sakakawea
Box 732
Riverdale, ND 58565
Ph. (701) 487-3315

Lewis & Clark
4904 119th Rd. NW
Epping, ND 58843
Ph. (701) 859-3071

Turtle River
3084 Park Ave.
Arvilla, ND 58214
Ph. (701) 594-4445
•Elmwood-Grafton

May 16, 2002

Noel R. Poe
National Park Service
Theodore Roosevelt National Park
PO Box 7
Medora, ND 58645

RE: Proposed Theodore Roosevelt National Preserve

Dear Mr. Poe:

The North Dakota Parks and Recreation Department has reviewed the above referenced proposal to create a 23,000 to 25,000 acre national preserve in Billings County, North Dakota.

Our agency scope of authority and expertise covers recreation and biological resources, in particular rare plants and natural communities. The project as defined does not affect state park lands that we manage, or Land and Water Conservation Fund recreation projects that we coordinate.

The Department supports the proposed national preserve. For your information, the ND Natural Heritage Inventory Program has records for several rare species and natural communities within and adjacent to the proposed boundary. Please see enclosed map and spreadsheet for details. Additional information regarding these rare species and natural communities can be found online at NatureServe <http://www.natureserve.org/explorer/>.

We appreciate your commitment to rare plant, animal and natural community conservation, management and inter-agency cooperation to date. For additional information please contact Kathy Duttonhefner of our staff. Thank you for the opportunity to comment on this project.

Sincerely,

Jesse Hanson,
Planning and Natural Resources

R.USNDNHI*1017

Heritage Inventory Rare Species and Natural Communities

State Common Name	Township & Range	Section	TRS Notes	State Rank	Global Rank	Federal Status	Last Observation
GOLDEN EAGLE	143N101W	10		S3	G5		1987-05-15
BLACK-FOOTED FERRET	143N101W	14		S1	G1	(LE,XN)	1936
BADLANDS SLOPE	143N101W	23	NW4	S4			1963
SILVER SAGE-WESTERN WHEATGRASS SCRUB	143N102W	01	NW4SE4	S2S3			1976-07-25
WESTERN LITTLE BLUESTEM PRAIRIE	143N102W	01	NE4SW4	S2			1976
GREEN ASH UPLAND WOODLAND	143N102W	03	NW4NW4	S3			1976-07-25
GREEN ASH UPLAND WOODLAND	143N102W	03	NW4NW4, SW4NW4	S3			1976-07-25
STURGEON CHUB	143N102W	04		S2	G2	C	1978
WESTERN COTTONWOOD FLOODPLAIN	143N102W	04	SW4NE4	S3			1976-07-24
SILVER SAGE-WESTERN WHEATGRASS SCRUB	143N102W	05	NW4NW4	S2S3			1976-07-24
GREEN ASH UPLAND WOODLAND	143N102W	10	SE4NW4	S3			1976
WESTERN LITTLE BLUESTEM PRAIRIE	143N102W	14	NW4SW4	S2			1976
WESTERN WHEATGRASS PRAIRIE	143N102W	16	SW4SW4	S3S4			1976
GREEN ASH UPLAND WOODLAND	143N102W	21	SW4NE4	S3			1976-07-24
ROCKY MOUNTAIN JUNIPER WOODLAND	143N102W	21	SW4NW4	S3			1976-07-24
WESTERN WHEATGRASS PRAIRIE	143N102W	21	NW4SE4	S3S4			1976
WESTERN COTTONWOOD FLOODPLAIN	143N102W	22	SW4SW4	S3			1976-07-24
GOLDEN EAGLE	143N102W	23		S3	G5		1991-06-06
ROCKY MOUNTAIN JUNIPER WOODLAND	143N102W	23	SW4NW4, NW4SW4	S3			1976-06-08
SILVER SAGE-WESTERN WHEATGRASS SCRUB	143N102W	23	NW4SE4	S2S3			1976-06-08
WESTERN FLOODPLAIN FOREST	143N102W	27	SW4NE4	S3			1976-07-24
GOLDEN EAGLE	144N100W	06		S3	G5		1987-05-15
COMMON POORWILL	144N100W	06		S4	G5		1983-07-17
CAVE	144N100W	06		S2			1981
COOPER'S HAWK	144N101W	07		SU	G5		1976-06-29
NEEDLE-AND-THREAD MIXED GRASS PRAIRIE	144N101W	09	SE4	S2			1983-05-23
NEEDLEGRASS-WHEATGRASS PRAIRIE	144N101W	10	SW4	S2			1983-05-23
ALKALI SACATON	144N102W	28	NW4SE4	S2	G5		1993-09-03
MOUNTAIN PLOVER	144N102W	33		SX	G2	PT	1885

ons of many individuals and organizations. In most cases, this
ghly surveyed, and new species are still being discovered. For these
its in any part of North Dakota. Natural Heritage data summarize the
he database. This data should never be regarded as final statements

5/15/2002



**NORTH DAKOTA DEPARTMENT OF HEALTH
Environmental Health Section**

Location:

1200 Missouri Avenue
Bismarck, ND 58504-5264

Fax #:

701-328-5200

Mailing Address:

P.O. Box 5520
Bismarck, ND 58506-5520

May 16, 2002

SHO
5/24

Mr. Noel Poe
Superintendent
Theodore Roosevelt National Park
215 Second Avenue
P.O. Box 7
Medora, ND 58645

Dear Mr. Poe:

This letter is in response to your letter of April 15, 2002, requesting comments on issues for the Boundary Study Environmental Assessment for the proposed Theodore Roosevelt National Preserve. One of the issues that is listed in your letter is the relationship of the proposal to air and water resources and quality. The Department has one question regarding air quality issues for the proposed preserve. The Theodore Roosevelt National Park, including the Elkhorn Ranch Unit, is currently a Class I area under the Prevention of Significant Deterioration rules. The proposed preserve is currently a Class II area and it is our understanding that it will remain a Class II area unless redesignated. Does the National Park Service have any intention of redesignating this proposed reserve to Class I status. We believe this issue should be addressed in the Environmental Assessment.

If you have any questions, please feel free to contact us.

Sincerely,

Terry L. O'Clair, P.E.
Director
Division of Air Quality

TLO/TB:saj

Received

MAY 21 2002

Theodore Roosevelt
National Park

Environmental Health
Section Chief's Office
701-328-5150

Air
Quality
701-328-5188

Municipal
Facilities
701-328-5211

Waste
Management
701-328-5166

Water
Quality
701-328-5210

Website: www.health.state.nd.us/ndhd/enviro

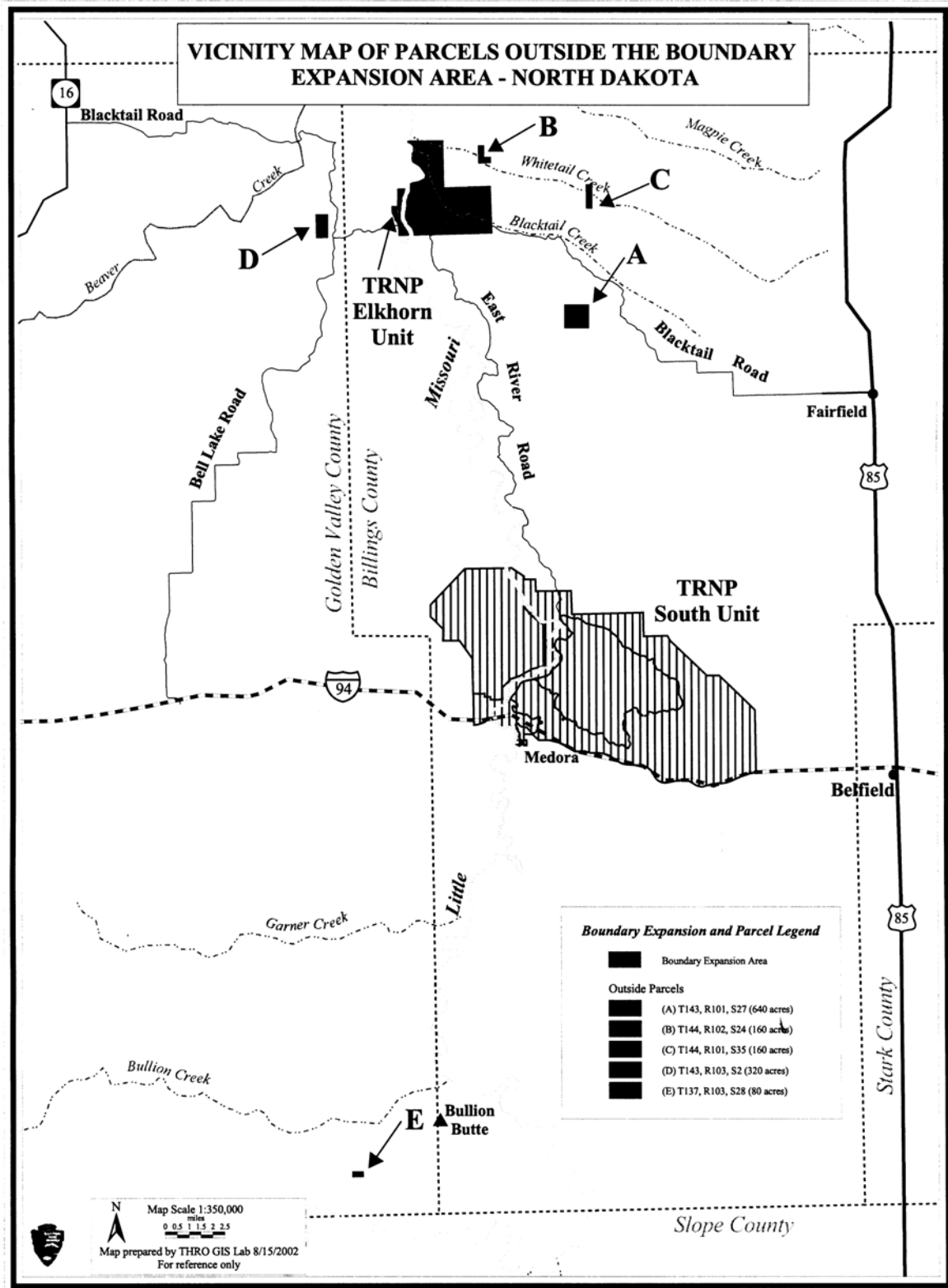
Printed on recycled paper.

APPENDIX B

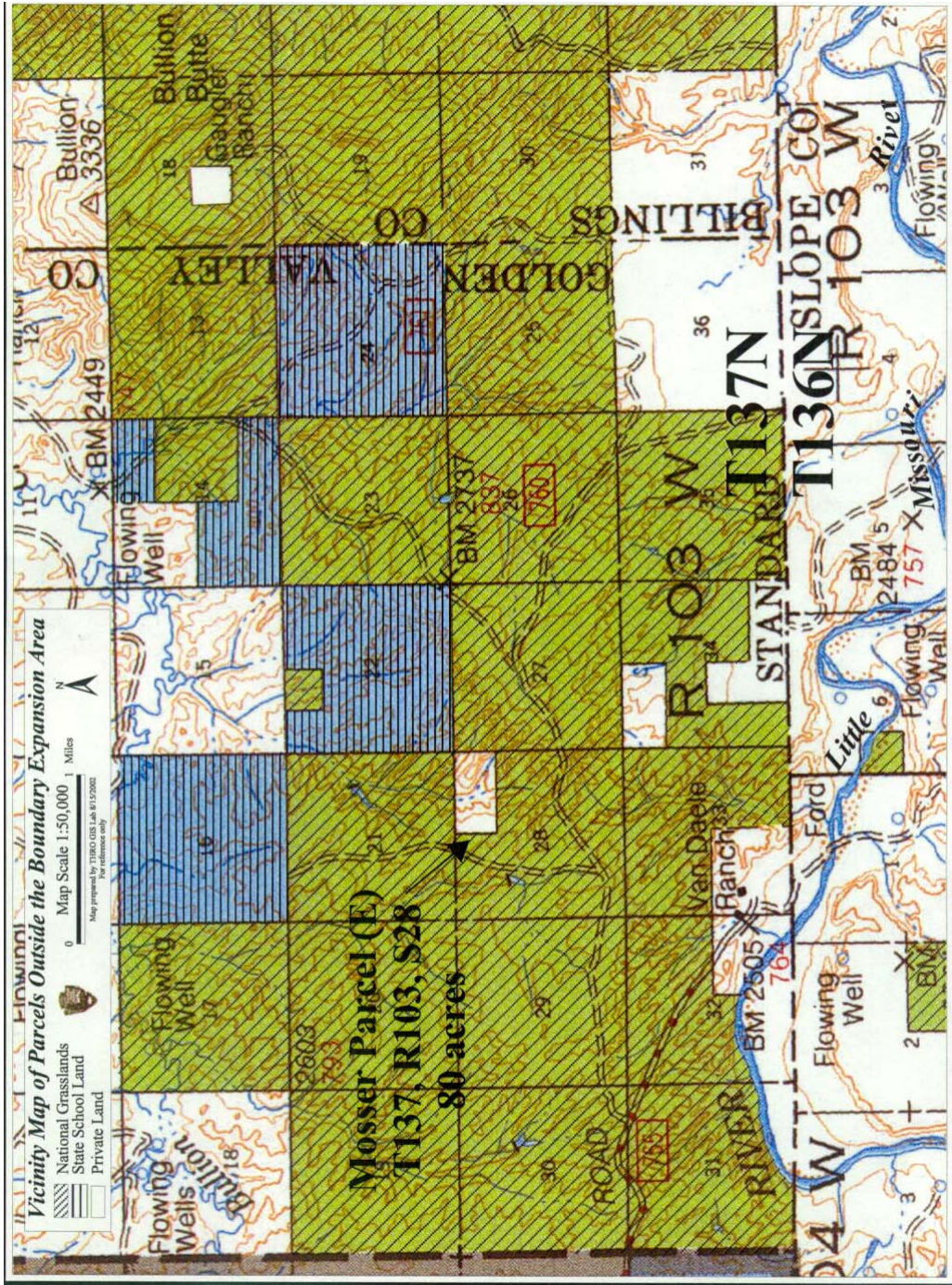
PARCELS OUTSIDE THE BOUNDARY EXPANSION AREA TO BE PURCHASED FOR EXCHANGE PURPOSES

PARCELS OUTSIDE THE BOUNDARY EXPANSION AREA TO BE PURCHASED FOR EXCHANGE PURPOSES

Owner	Land Parcels	Location	Acreage
<i>Eberts</i>	▪ Section 27, T143N, R101W	▪ about 7 miles east and 4 miles south of the Elkhorn Ranch Unit of the park	640 acres
	▪ Part of Section 24, T144N, R102W	▪ about 4 miles east and 3 miles north of the Elkhorn Ranch Unit	160 acres
	▪ Part of Section 35, T144N, R101W	▪ about 8 miles east of the Elkhorn Ranch Unit	160 acres
<i>Mosser</i>	▪ Part of Section 28, T137N, R103 W	▪ about 3 miles west of the Elkhorn Ranch Unit	320 acres
	▪ Part of Section 2, T143N, R103W	▪ about 20 miles south and 7 miles west of Medora, ND	80 acres
	TOTAL AREA		1,360 acres







APPENDIX C

EXISTING OPERATIONS EXEMPTION UNDER 36 CFR, SECTION 9.33

§ 9.32

(g) *Commercial Vehicle*. Any motorized equipment used in direct or indirect support of operations.

(h) *Unit*. Any National Park System area.

(i) *Owner*. The owner, or his legal representative, of the rights to oil and gas being exercised.

(j) *Designated Roads*. Those existing roads determined by the Superintendent in accordance with 36 CFR 1.5 and § 4.19 to be open for the use of the general public or for the exclusive use of an operator.

(k) *Oil*. Any viscous combustible liquid hydrocarbon or solid hydrocarbon substance easily liquifiable on warming which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas without resort to manufacturing process.

(l) *Gas*. Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(m) *Site*. Those lands or waters on which operations are to be carried out.

(n) *Contaminating substances*. Those substances, including but not limited to, salt water or any other injurious or toxic chemical, waste oil or waste emulsified oil, basic sediment, mud with injurious or toxic additives, or injurious or toxic substances produced or used in the drilling, development, production, transportation, or on-site storage, refining, and processing of oil and gas.

(o) *Statement for Management*. A National Park Service planning document used to guide short- and long-term management of a unit; to determine the nature and extent of planning required to meet the unit's management objectives; and, in the absence of more specific planning documents, to provide a general framework for directing park operations and communicating park objectives to the public.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979, as amended at 60 FR 55791, Nov. 3, 1995; 62 FR 30234, June 3, 1997]

§ 9.32 Access.

(a) No access on, across or through lands or waters owned or controlled by

36 CFR Ch. I (7–1–01 Edition)

the United States to a site for operations will be granted except for operations covered by § 9.33 and, except as provided by § 9.38, until the operator has filed a plan of operations pursuant to § 9.36 and has had the plan of operations approved in accordance with § 9.37. An approved plan of operations serves as the operator's access permit.

(b) No operations shall be conducted on a site within a unit, access to which is on, across or through federally-owned or controlled lands or waters except in accordance with an approved plan of operations, the terms of § 9.33 or approval under § 9.38.

(c) Any operator intending to use aircraft of any kind for access to a federally-owned or controlled site must comply with these regulations. Failure of an operator to receive the proper approval under these regulations prior to using aircraft in this manner is a violation of both these regulations and 36 CFR 2.17.

(d) No access to a site outside a unit will be permitted across unit lands unless such access is by foot, pack animal, or designated road. Persons using designated roads for access to such a site must comply with the terms of § 9.50 where applicable.

(e) Any operator on a site outside the boundaries of a unit must comply with these regulations if he is using directional drilling techniques which result in the drill hole crossing into the unit and passing under any land or water the surface of which is owned by the United States. Except, that the operator need not comply in those areas where, upon application of the operator or upon his own action, the Regional Director is able to determine from available data, that such operations pose no significant threat of damage to park resources, both surface and subsurface, resulting from surface subsidence, fracture of geological formations with resultant fresh water aquifer contamination, or natural gas escape, or the like.

§ 9.33 Existing operations.

(a) Any person conducting operations on January 8, 1979 in accordance with a Federal or State issued permit may continue to do so as provided by this

National Park Service, Interior

§ 9.35

section. After expiration of such existing permits no operations shall be conducted except under an approved plan of operations, unless access is granted by the Regional Director under § 9.38.

(1) All Federal special use permits dealing with access on, across, or through lands or waters owned or controlled by the United States to a site for the conduct of operations within any unit issued prior to January 8, 1979 shall expire according to their terms and shall not be renewed, unless by the terms of the existing permit it must be renewed.

(2) All operations on a site in a unit access to which is on, across, or through federally owned or controlled lands or waters conducted pursuant to a valid State access permit may be continued for the term of that permit, exclusive of any renewal period whether mandatory or discretionary, if conducted in accordance with the permit.

(b) Any person conducting operations on January 8, 1979 in a unit where Federal or State permits were not required prior to January 8, 1979 may continue those operations pending a final decision on his plan of operations; *Provided*, That:

(1) The operator (within thirty (30) days of January 8, 1979), notifies the Superintendent in writing of the nature and location of the operations; and

(2) Within sixty (60) days after such notification, the operator submits, in accordance with these regulations, a substantially complete proposed plan of operations for those operations;

(3) Failure to comply with § 9.33(b) (1) and (2) shall constitute grounds for the suspension of operations.

(c) At any time when operations which are allowed to continue under § 9.33 (a) and (b) pose an immediate threat of significant injury to federally owned or controlled lands or waters, the Superintendent shall require the operator to suspend operations immediately until the threat is removed or remedied. The Superintendent must, within five (5) days of this suspension notify the operator in writing of the reasons for the suspension and of his

right to appeal the suspension under § 9.48.

[43 FR 57825, Dec. 8, 1978; 44 FR 37914, June 29, 1979]

§ 9.34 Transfers of interest.

(a) Whenever an owner of rights being exercised under an approved plan of operations sells, assigns, bequeaths, or otherwise conveys all or any part of those rights, he, his agent, executor, or representative must notify the Superintendent within sixty (60) days of the transfer of: the site(s) involved; the name and address of the person to whom an interest has been conveyed; and a description of the interest transferred. Failure to so notify the Superintendent shall render the approval of any previously approved plan of operations void.

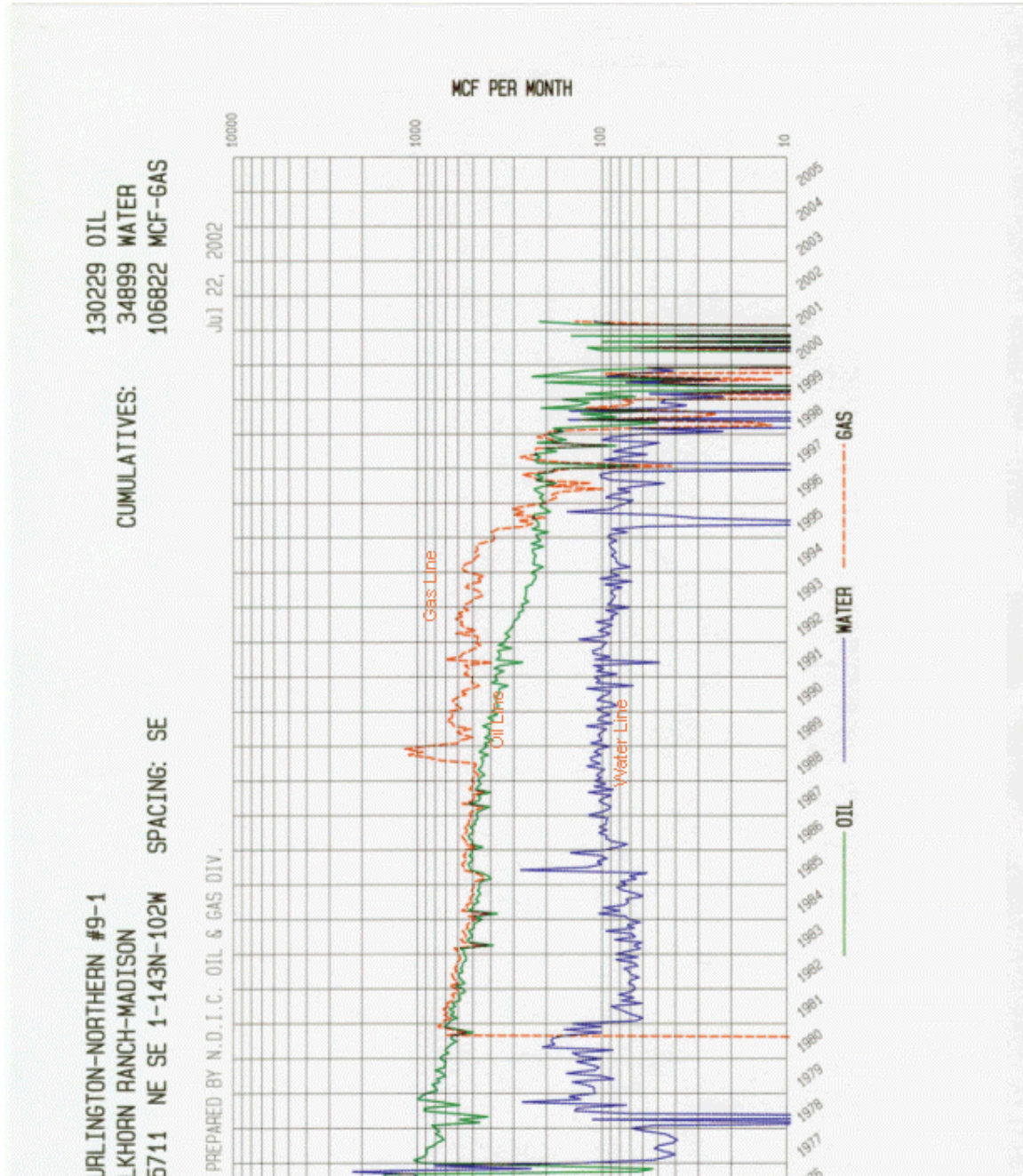
(b) The transferring owner shall remain responsible for compliance with the plan of operations and shall remain liable under his bond until such time as the Superintendent is notified of the transfer in accordance with paragraph (a). At that time the Superintendent will prohibit the new owner from operating until such time as the new owner has filed with the Superintendent: (1) A statement ratifying the existing plan of operations and stating his intent to be bound thereby, or a new plan of operations, and (2) a suitable substitute performance bond which complies with the requirements of § 9.48.

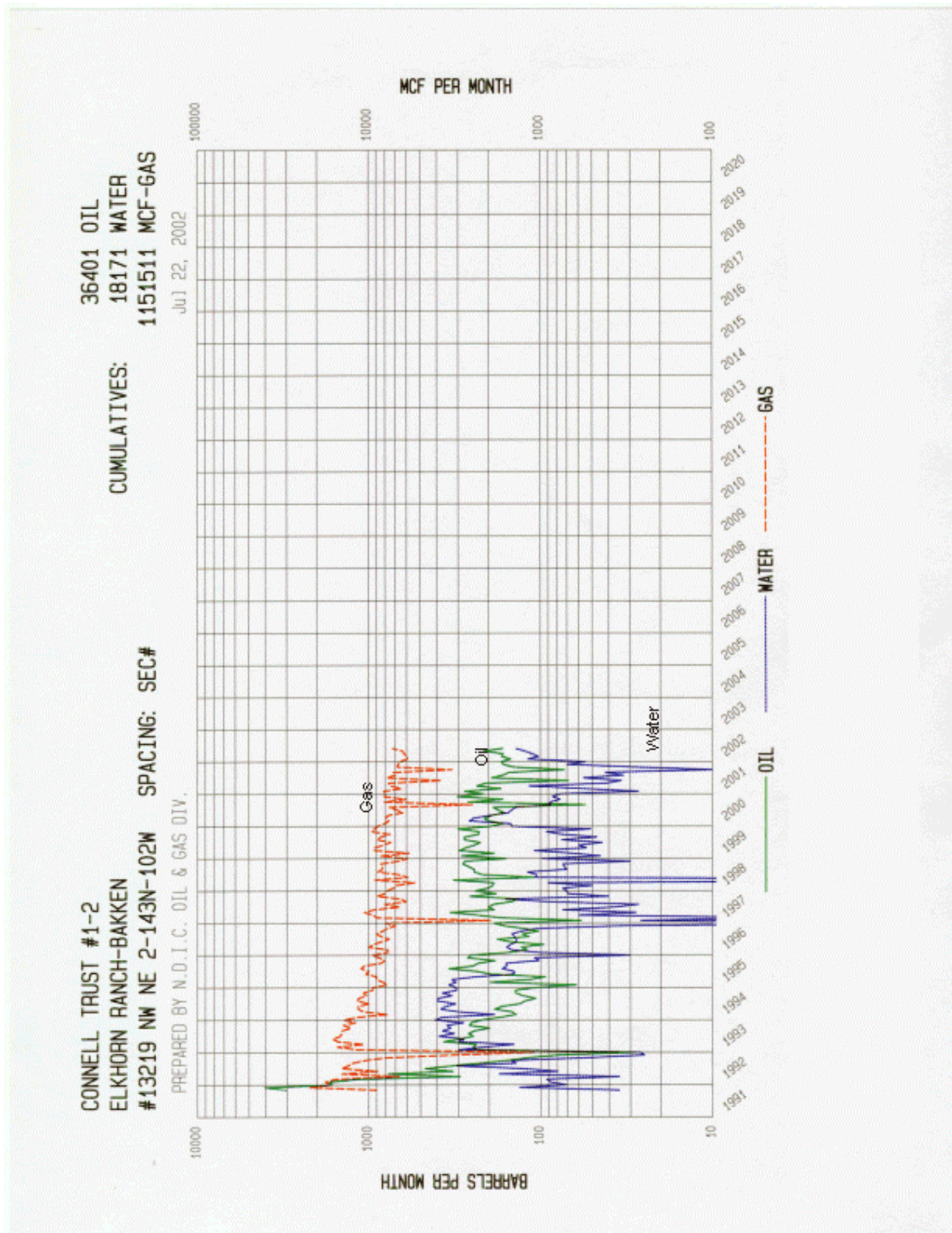
§ 9.35 Use of water.

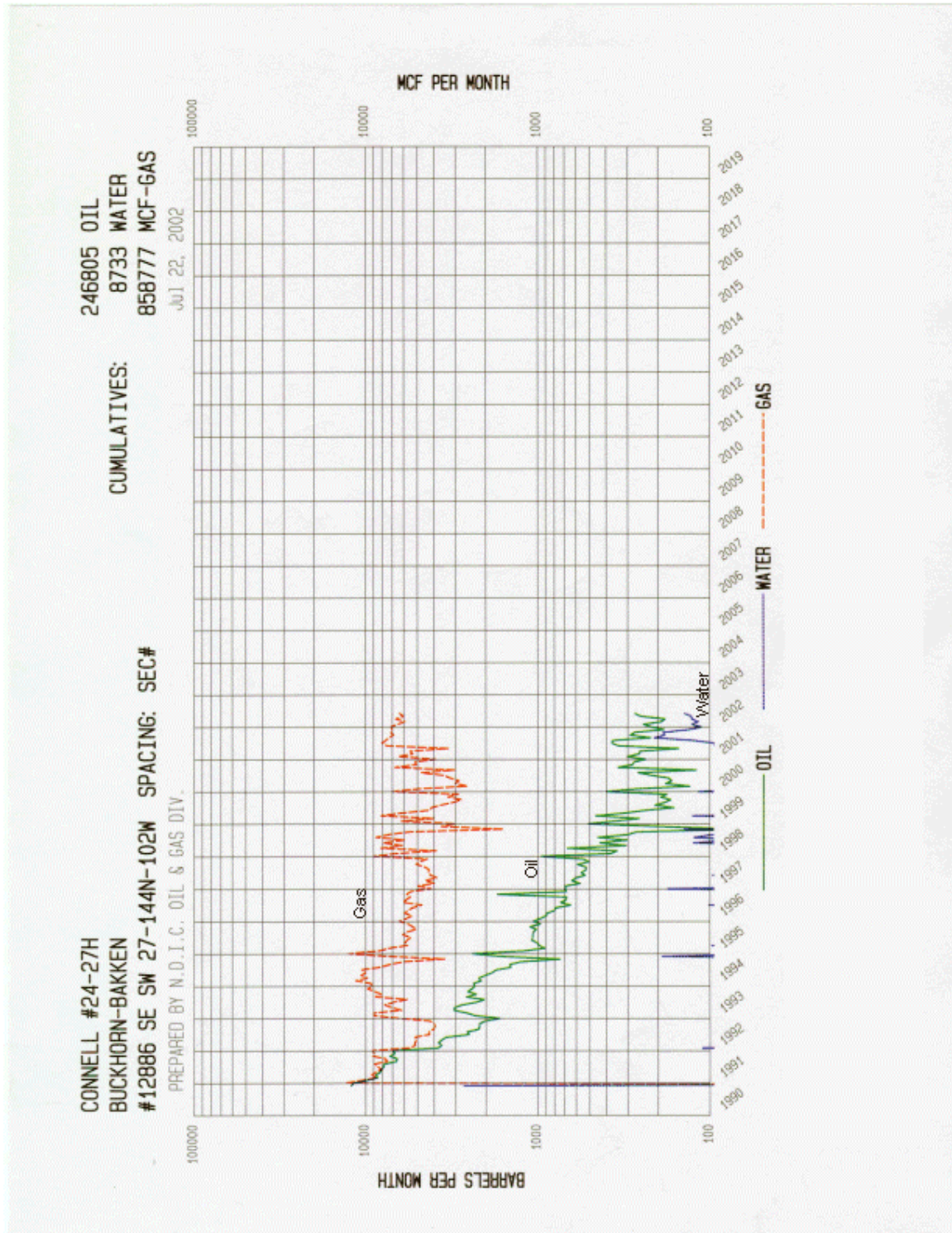
No operator may use for operations any water from a point of diversion which is within the boundaries of any unit unless authorized in writing by the Regional Director. The Regional Director shall not approve a plan of operations requiring the use of water from such source unless the operator shows either that his right to the use of the water is superior to any claim of the United States to the water, or where the operator's claim to the water is subordinate to that of the United States that the removal of the water from the water system will not damage the unit's resources. In either situation, the operator's use of water must comply with appropriate State water laws.

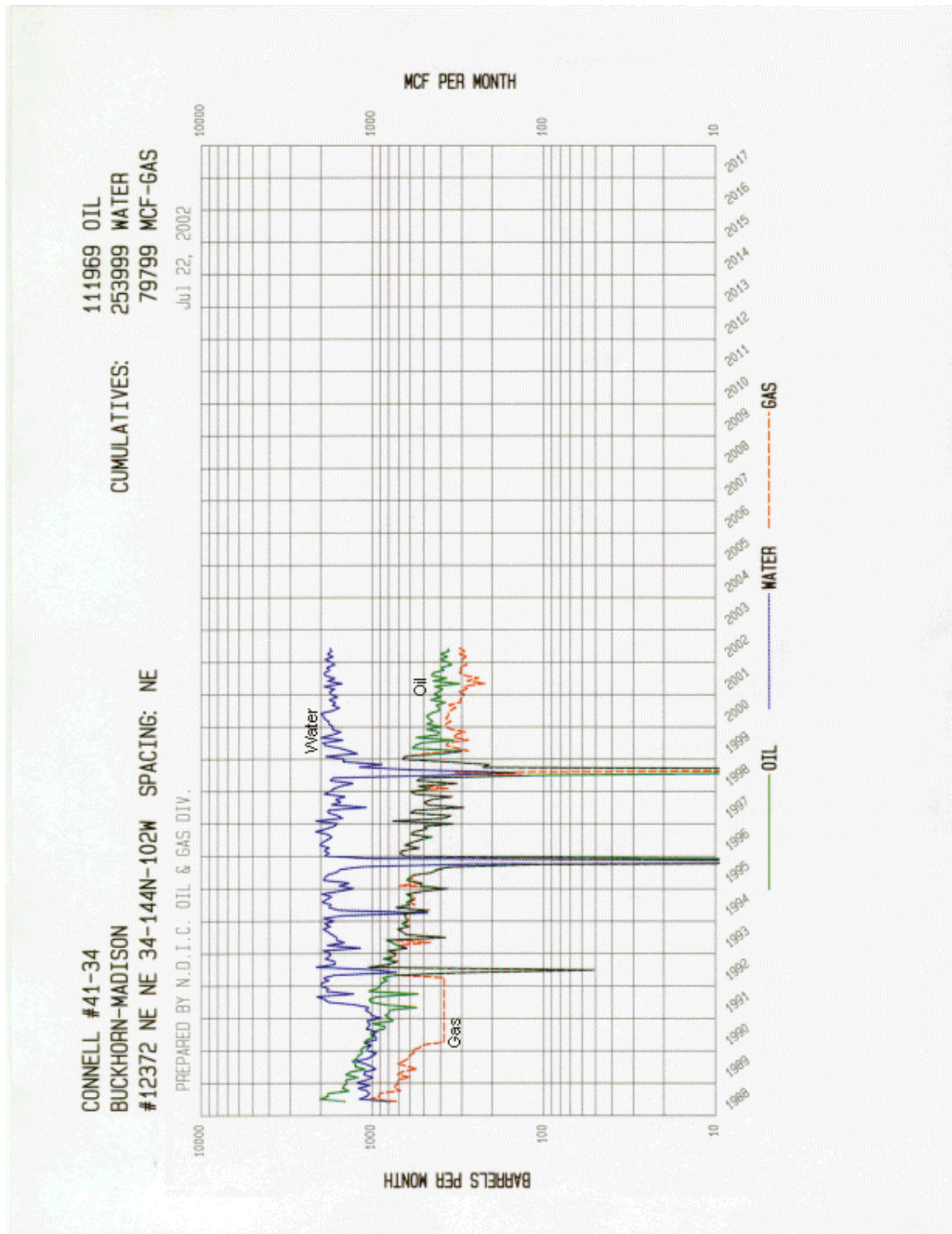
APPENDIX D

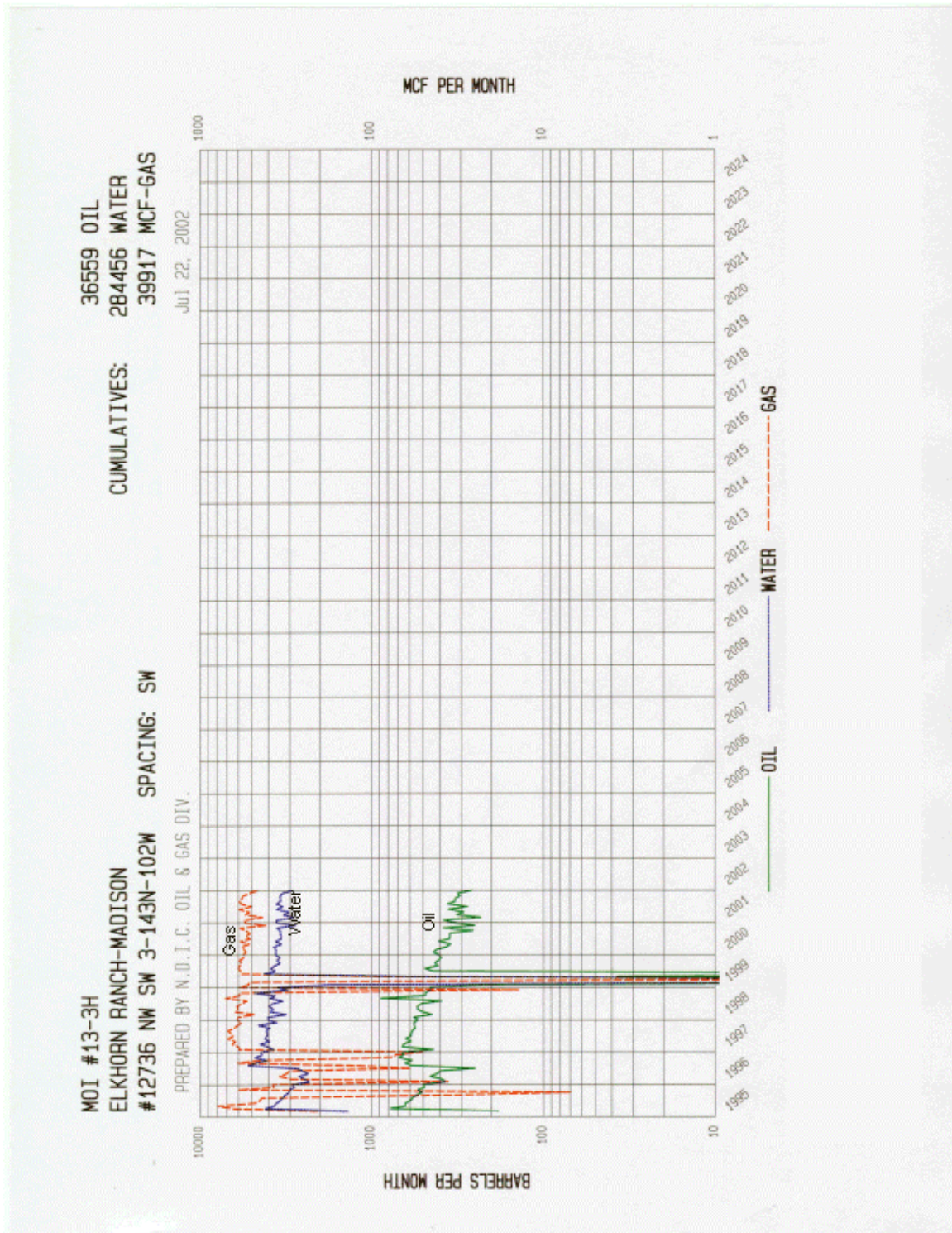
NONFEDERAL OIL AND GAS DEVELOPMENT PRODUCTION CHARTS

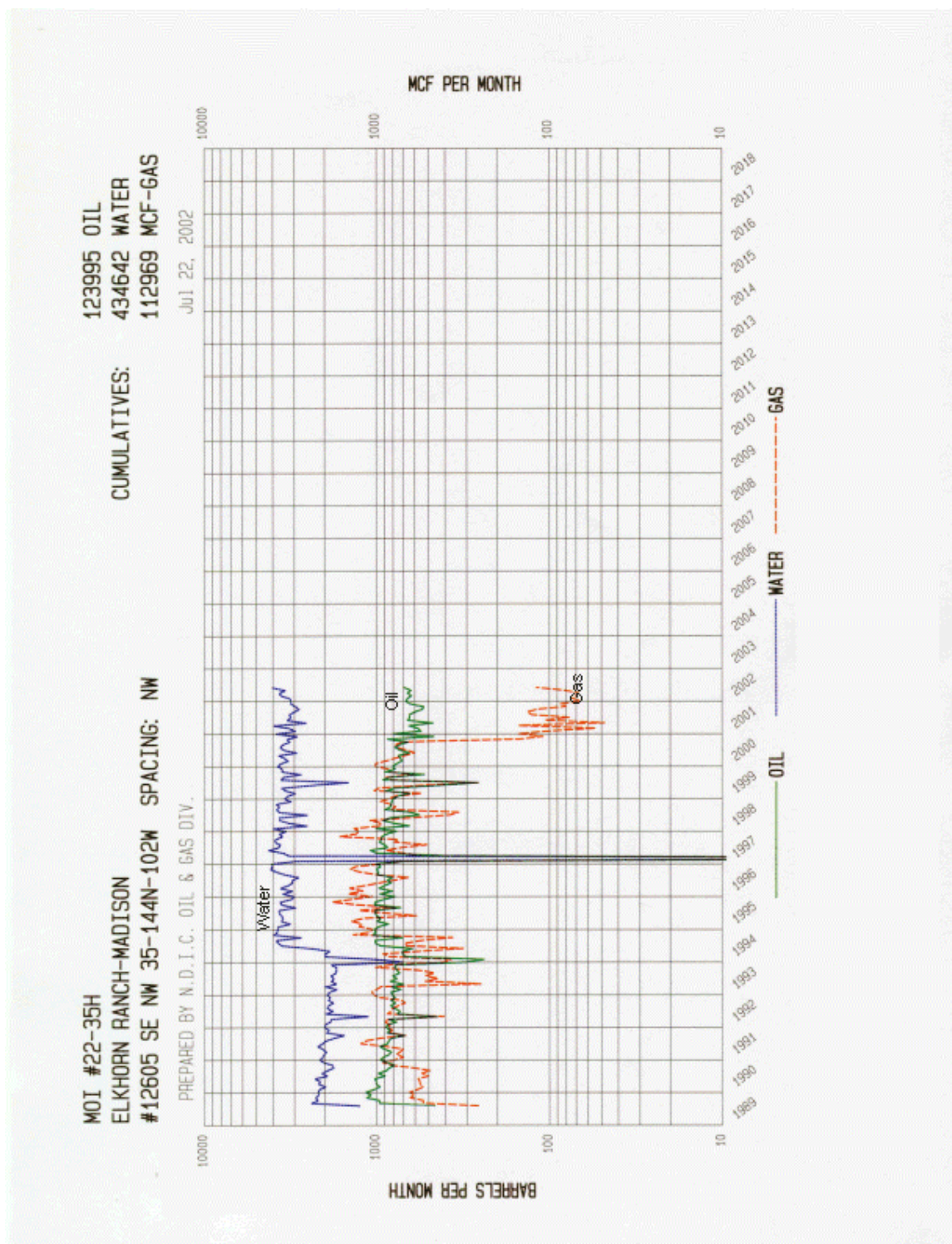


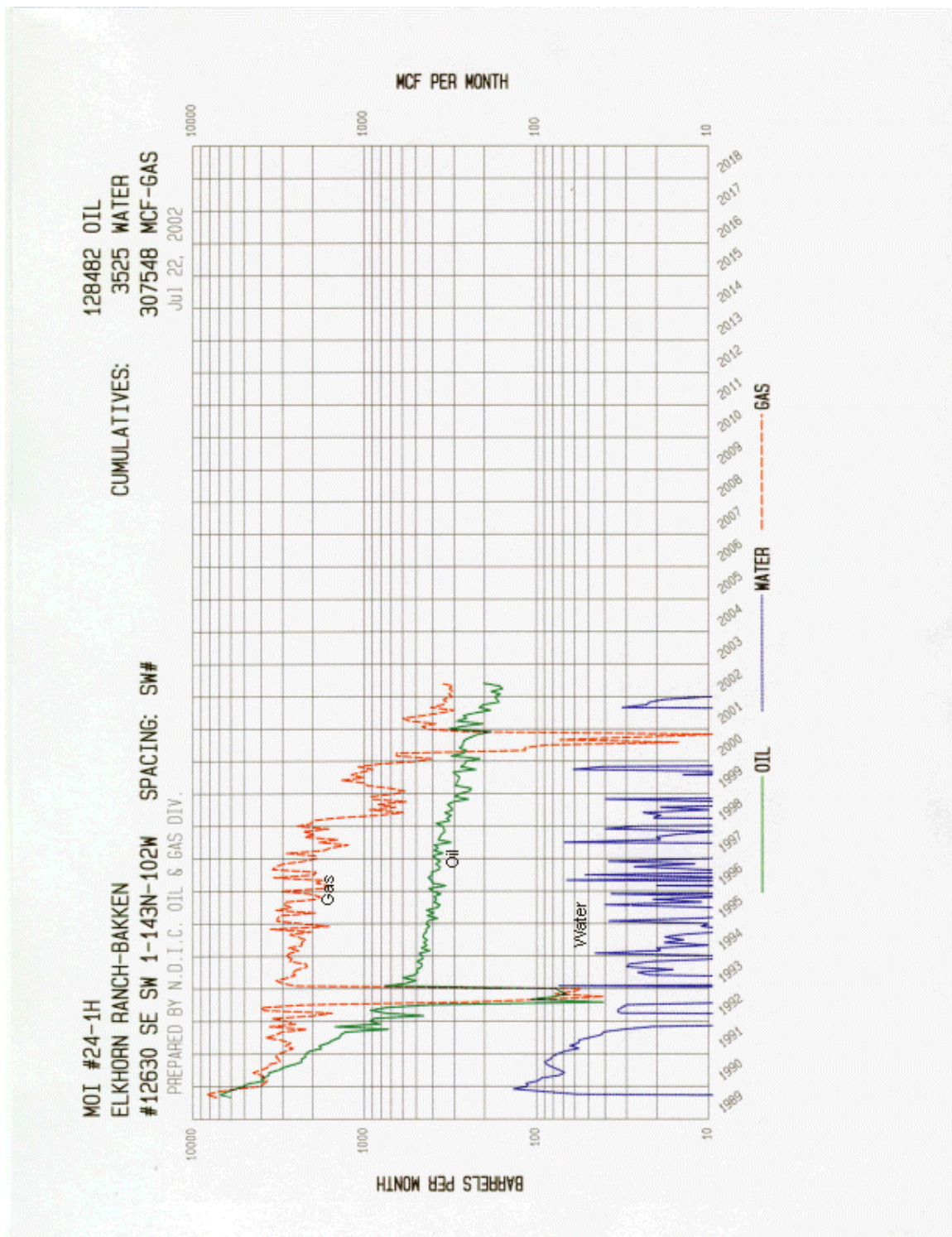












APPENDIX E

REPLY TO NORTH DAKOTA PETROLEUM COUNCIL CONCERNS

1. How will valid existing rights be protected? How will the National Park Service ensure that access to outstanding mineral rights (including both fee and leased federal minerals) is provided in a timely manner? How will mineral owners be compensated if their minerals are stranded?

All rights associated with valid federal mineral leases existing as of the date Congress declares the subject land under the jurisdiction of the National Park Service will be recognized and will continue to be in effect until the leases expire under their own terms. Absent specific language in federal legislation, after the date Congress declares the subject lands under the jurisdiction of the National Park Service, the BLM may not issue new federal mineral leases within the unit.

All rights associated with private mineral interests will also be recognized. Those operations that exist as of the date Congress declares the subject land under the jurisdiction of the National Park Service and have a valid federal or state permit, qualify for the “existing operations” exemption under NPS regulations governing nonfederal oil and gas contained at 36 CFR Part 9, Subpart B (“9B regulations”). See 36 CFR Section 9.33. Existing operations are allowed to continue to operate pursuant to the terms of their existing federal or state permit. If an existing operation poses an “immediate threat of significant threat of injury to federally owned or controlled lands or waters,” the Superintendent has the authority to suspend that operation until the operator cures the threat. If an operation that qualifies for the existing operations exemption requires a new federal or state permit, the exemption is lost and the operator must comply with the plan of operations and bonding requirements of the 9B regulations. New operations proposed after the date Congress declares the subject land under the jurisdiction of the National Park Service will be subject to applicable provisions in the 9B regulations, including plan of operations and bonding requirements.

NPS processing time for new operations associated with private operations is generally 4-6 months. The clock begins from the date an operator initiates planning discussions with park staff to the time an operator obtains approval to conduct operations. This timeframe includes time spent by an operator in scoping a project with the National Park Service, in acquiring relevant environmental data, and in preparing the plan of operations and the time the NPS spends in consultation with other federal, state, and local agencies; and in complying with the National Environmental Policy Act and other pertinent statutory and policy requirements.

The 9B regulations specifically state that “[t]hese regulations are not intended to result in the taking of a property interest, but rather to impose reasonable regulations on activities which involve and affect federally-owned lands.” 36 CFR Section 9.30. Since the 9B regulations were promulgated in 1979, the NPS has never denied a nonfederal oil and gas operator the right to exercise their rights in a park unit. If an operator believes an NPS decision on a plan of operation has denied the rights associated with its oil and gas interest, the 9B regulations provide for administrative appeal of that decision, Section 9.49. If there is an adverse decision through the administrative process, an operator may seek relief in federal court.

2. Will the National Park Service be required to analyze and prepare an oil and gas resource assessment?

The National Park Service will not prepare an oil and gas resource assessment before acquiring the property. In subsequent planning efforts, the NPS may seek out resource assessments prepared by other agencies, e.g., USGS, so the park can formulate and analyze

reasonably foreseeable development scenarios. The NPS is aware of existing oil and gas production and the possibility of future exploration and development in the area.

3. Will NPS prepare or contemplate a Statement of Adverse Energy Impact in accordance with the National Energy Policy and Executive Order 13211?

Executive Order 13211 applies to agencies undertaking a new rulemaking. A boundary expansion of the park does not involve new rulemaking. EO 13211 does not apply in this instance, and the NPS will not prepare a Statement of Adverse Energy Impact.

4. Will NEPA apply to the process? Can and should the National Park Service or Congress determine in advance, or include in any authorization, an express determination that the National Park Service is required to allow reasonable, unimpeded access to outstanding mineral rights, and therefore there is no “major federal action” involved under NEPA?

With respect to the proposed boundary expansion of the Elkhorn Ranch, the NPS intends to prepare an Environmental Assessment (EA) for public review and comment pursuant to NEPA. NEPA will also apply when the NPS considers approval for a prospective nonfederal operator’s proposed exploration or development activity. The NPS recognizes the right of reasonable access associated with outstanding nonfederally mineral rights, but it also has the authority to apply reasonable regulations on the conduct of nonfederal oil and gas activities. The NPS 9B regulations require that an operator obtain an approved plan of operations and a performance bond. Approval of a plan of operations is a Federal action that requires the NPS to comply with NEPA. The NPS’s compliance responsibilities under NEPA are typically met via the preparation of an EA.

5. NPS must address impact to adjacent lands and minerals.

Oil and gas development on adjacent lands will continue in accordance with applicable state and Federal laws and regulations. The NPS will continue to work cooperatively with the US Forest Service, Bureau of Land Management and State of North Dakota to mitigate potential adverse impacts to park resources and values associated with oil and gas development on adjacent lands.

6. Will existing oilfield roads on private lands that are purchased by the NPS be required to be upgraded to NPS specifications or will existing oilfield roads be grandfathered if new road requirements are implemented?

Based upon initial evaluation of existing oilfield access roads on private lands under consideration for inclusion in Theodore Roosevelt National Park, the NPS does not believe that current operators would be required to make substantial improvements to existing well access roads, particularly such secondary access roads that terminate at well sites and would not be used as a primary route for vehicular traffic. The NPS may suggest that operators install a gate on well access roads to preclude access by park visitors in the interest of public safety and to avoid liability.

Operations that qualify for the “existing operations” exemption under the 9B regulations at 36 CFR §9.33 are allowed to continue to operate pursuant to the terms of their existing Federal or state permit. If an existing operation poses an “immediate threat of significant threat of injury to federally owned or controlled lands or waters,” the Superintendent has the authority to

suspend that operation until the operator cures the threat. If a road in disrepair is the cause of this immediate threat of significant injury to park resources, the Superintendent can require that the road condition be upgraded or maintained in a manner that prevents a threat to park resources. The NPS will evaluate an operator's plan for construction and maintenance of roads associated with new operations when the operator submits its plan of operations to the NPS. Specific methods of construction and maintenance are determined on a case-by-case basis, and any stipulation or condition attached to an approved plan of operations will be tied to the protection of park resources and values.

7. The National Park Service must address liability associated with the public entering into lands that were previously privately owned.

Under an approved plan of operations, all operators agree to "hold harmless the United States and its employees from any damages or claims of injury or death of persons and damages or loss of property by any person or persons arising out of any acts or omissions by the operator, his agents, employees or subcontractors done in the course of operations." 36 CFR Section 9.51(b). If the United States/NPS is named as a defendant in a suit claiming personal injury or damage to property, the NPS will defend that claim through the Department of the Interior Solicitor's Office and Department of Justice.

8. Does the National Park Service have expertise in mineral exploration and development? If not, how will this resource be effectively managed?

The NPS's Geologic Resources Division (GRD) located in Denver, Colorado, provides oil and gas exploration and development engineering, policy, regulatory, and environmental protection support services to parks, including training of park staff for day-to-day oversight and management of operations in parks. GRD staff is available for on-site technical support to parks.

9. Will stipulations be put on oil and gas operations that will further constrain or prevent future operations? (For example, no drilling during summer months due to tourist activity in the park.) Will standard lease terms continue to be used?

With respect to the conduct of new operations on private mineral estate, the 9B regulations include operating standards that apply to all approved nonfederal oil and gas plans of operations in park units. See 36 CFR §9.41. Specific stipulations attached to an approved plan, beyond those articulated in the 9B regulations, are determined on a case-by-case basis, but will be reasonable time, place and manner measures designed to protect park resources and values. The 9B regulations specifically state that "[t]hese regulations are not intended to result in the taking of a property interest, but rather to impose reasonable regulations on activities which involve and affect federally-owned lands." 36 CFR §9.30. Since the 9B regulations were promulgated in 1979, the NPS has never denied a nonfederal oil and gas operator the right to exercise their right in a park unit.

If Congress were to authorize Federal oil and gas leasing and development on park expansion lands, the National Park Service would likely attach specific terms and conditions to future leases and proposed operations on such leases to ensure protection of park resources and values as provided for in BLM regulations at 43 CFR Section 3109.2.

10. Will the National Park Service be implementing tighter restrictions on sound and emissions?

Please see response to questions 1 and 9 above concerning “existing operations” and reasonable time, place and manner measures, respectively.

11. Will there be buffer zones of any type?

The 9B regulations include operating standards that apply to all approved nonfederal oil and gas operations in park units. See 36 CFR Section 9.41. Section 9.41(a) prescribes specific setbacks for operations that are conducted near certain water bodies and structures. A park’s planning document, e.g., General Management Plan, Resource Management Plan, may also identify specific park areas that are determined to be sensitive resource areas, e.g., threatened and endangered species habitat, wetlands, floodplains. These sensitive resources areas are developed in coordination with other agencies having jurisdiction over oil and gas operations, e.g., U.S. Fish and Wildlife, U.S. Army Corps of Engineers. Certain stipulations designed to minimize impacts in these areas may be articulated in the park’s planning document. These stipulations can be in the form of no surface occupancy or setbacks from these areas.

If your question was related to the establishment of buffer zones outside the expanded park boundary, there is no park recommendation for any such buffer zones on federal, state or private land external to the expanded boundaries. The park would continue to monitor oil and gas and other development external to the park boundaries to determine if such proposed development impacts the resources and values within the park boundary. If the park believes there might be an impacts, we would work with appropriate agencies or individuals and suggest mitigation alternatives that eliminate or reduce the impacts.

12. How will the NPS ensure that leasing of any current or future unleased federal minerals is not delayed or unduly restricted by its activities as manager of the surface?

Please see response to question 1.

13. Will new leases be issued and what will be the terms of the lease?

Please see response to questions 1 and 9.

14. Who will perform the inspection and enforcement role on these lands?

Park resource managers and park rangers will perform inspection and enforcement with technical support provided by Geologic Resources Division staff.

15. What reclamation practices will be followed?

Reclamation requirements for operation sites on existing Federal oil and gas leases will follow the terms and conditions of the lease issued by the BLM. With respect to operation sites on private mineral estate, those nonfederal oil and gas operations that qualify for the existing operation exemption from the 9B regulations may continue to operate according to the terms of the existing federal or state permit. If post-development reclamation does not require the issuance of new permit, the existing operation may reclaim its operation according to the terms

of the existing permit and other applicable state requirements. If post-development reclamation does require the issuance of a new permit, the operator will be required to comply with NPS 9B regulations, including obtaining an approved plan of operations, filing a suitable performance bond, and reclaiming the site in accordance with the specific reclamation requirements found at 36 CFR §9.39.

16. How will spills be reported and what agency will oversee cleanup?

In the event of a contaminating substance release from an oil and gas operation, operators would be required to immediately notify Theodore Roosevelt National Park in addition to reporting requirements pursuant to other Federal, state and local laws and regulations. The NPS would assume responsibility as the “on-scene coordinator” for all spill response and remediation actions performed by an operator or contracted personnel on NPS lands and waters.

17. Will the NPS look to expand the Preserve boundaries as opportunities arise?

There are no boundary expansion plans beyond that which is presently contemplated.

18. Will the NPS resist efforts by environmental groups to prohibit oil and gas development on the Preserve?

The NPS will administer nonfederal oil and gas development in the park in accordance with its 9B regulations. Environmental groups and oil and gas trade associations alike are free to try to influence agency decision making through public processes. . If, however, an environmental group or an allegedly aggrieved operator files a specific legal challenge in court, the Department of the Interior Solicitor’s Office, in concert with the Department of Justice and NPS staff, will defend NPS’s actions.

19. Will the environmental community and other be allowed to delay the issuance of permits through appeals?

The NPS will conscientiously apply its regulations and all applicable statutes and policies. If environmental organizations believe that the NPS has not followed all applicable statutes and policies in implementing its regulations, it can file legal actions that may result in the delay in issuing permits. The 9B regulations provide for an appeal process only to aggrieved oil and gas operators, not the general public.

20. What new reporting requirements will be established?

The 9B regulations have reporting requirements for accident and fires. See 36 CFR §9.46. The NPS will also require that operators filing plans of operations for the conduct of new oil and gas operations also file an acceptable spill contingency plan that will include certain reporting requirements.

21. Will there be new requirements on oil field equipment and lease locations (for example: painting equipment, adding equipment to reduce noise, smells, or emissions)?

Operations that qualify for the “existing operations” exemption under the 9B regulations at 36 CFR Section 9.33 are allowed to continue to operate pursuant to the terms of their existing

federal or state permit. Stipulations and mitigation measures attached to new operations will be evaluated on a case-by-case basis. These stipulations may include requirements for painting equipment to minimize visual impacts to park visitors, adding mufflers to reduce auditory impacts to visitors, and measures designed to meet emission standards under the Clean Air Act.

22. Will additional fencing be required to prevent access by the public or wildlife to oil and gas areas?

Operations that qualify for the “existing operations” exemption under the 9B regulations at 36 CFR §9.33 are allowed to continue to operate pursuant to the terms of their existing Federal or state permit. Stipulations and mitigation measures attached to new operations will be evaluated on a case-by-case basis. The NPS typically requires an operator to erect and maintain a fence around the well and production facilities to protect the facility, visitors, and wildlife. Three-strand barbed wire fencing around existing production pads appears to meet NPS concerns. However, perhaps the fenced area could be reduced and operators could attach “do not enter” signs to fences to warn the public of potential hazards.

23. Will new areas of no surface occupancy or Roadless areas be established?

Please see response to question 11. The NPS will evaluate new plans of operation on a case-by-case basis and work with the operator to determine suitable surface locations for exploration and development activities that serve to minimize adverse impact to park resources and value. Typically, the NPS works with an operator to tailor a proposed oil and gas operation to the specific environmental concerns present at the site. There is no intent by the park to establish a “roadless zone” within the 6,000 acre park expansion but the question of where public roads are constructed will be an issue discussed in the General Management Plan.